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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,368	09/23/2003	Takafumi Noguchi	Q75436	9196

23373 7590 10/02/2006
SUGHRUE MION, PLLC
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SUITE 800
WASHINGTON, DC 20037

EXAMINER

CHOI, JACOB Y

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/667,368	Applicant(s) NOGUCHI, TAKAFUMI	
	Examiner Jacob Y. Choi	Art Unit 2875	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-12.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.


Sandra O'Shea
 Supervisory Patent Examiner
 Technology Center 2800

Continuation of 3. NOTE: Previously, the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform, therefore was not given patentable weight in the claim(s). It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed August 28, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "... a minimum light-emission value is equal to or less than 50% of a maximum light-emission value ... etc.") the general condition conditions of the claim are disclosed in the prior art, (e.g., Ishihara et al. US 2003/0048072), where in paragraph [0060]; "... the light is not affected by the classic optics ... there is no loss due to total reflection, improving the light extraction efficiency ... etc." & [0125]; "... When they go out into the air layer 320 with a refractive index of 1, the total reflection is eliminated, reducing the total reflection loss. Hence, the total quantity of light produced by the organic light-emitting element of this embodiment has increased to 1.5 times that of the element of normal thickness ... etc.". From the following passage, the maximum value is considered to be near 100%. The examiner concludes that a minimum light-emission value is equal to or less than 50% of a maximum light-emission value is clearly taught by the prior art. In considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "... light-emitting materials for at least two primary colors which emit the white light among light-emitting materials for three primary colors ... etc.") are disclosed by the prior art reference, Ishihara et al. US 2003/0048072, paragraphs [0117], [0122]; [0125]; "... The white light that has entered into the light extraction layer 313 is turned into single-color light of red, green and blue 322, 322' by color filters 316, 316' on the counter substrate 319. When they go out into the air layer 320 with a refractive index of 1, the total reflection is eliminated, reducing the total reflection loss. Hence, the total quantity of light produced by the organic light-emitting element of this embodiment has increased to 1.5 times that of the element of normal thickness ... etc.", [0129], [0138]; "... the organic light-emitting element in each pixel produces white light which passes through the color filters formed on the counter substrate and goes out as single-color rays of red, green and blue into the air layer ... etc.".

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).